

OPPOSITION OF WAYNE G. STRANG TO PETITION FOR RECONSIDERATION FILED BY JOHN MAYHILL

Background

On August 12, 2003, John Mayhill filed a petition with the Commission requesting reconsideration of the Commission's decision to require written permission prior to the transmission of any facsimile advertising. I am a consumer and facsimile machine owner in the state of California, the "Junk fax Capital of the World", and strongly support the Commission's actions and urge rapid denial of Mr. Mayhill's Petition.

General

The Commission's action in requiring evidence of written permission prior to transmitting advertising faxes was not taken lightly. The Commission is in possession of information demonstrating that fax broadcasters have fabricated documents in the past, and have presented those documents in court to demonstrate "permission" and defeat a properly filed TCPA claim. Although it may be unfortunate that Mr. Mayhill's organization is tarred by that same brush, weakening the Commission's requirement at this time would be contrary to the public interest.

Audio recording of permission

Mr. Mayhill requests that his organization be allowed to keep audio evidence of permission to fax. In my original comments submitted on December 12, 2002, I noted, "In the case of prerecorded messages, the requirement should be that consent must be verified in the same manner as faxes, **or by a third party as currently required when changing long-distance providers.**" [emphasis added]

In the case of junk faxes, there is too much opportunity for mischief in allowing verification by voice.

The Commission has long been plagued with complaints from consumers whose long-distance provider has been "slammed". Often this is done by unscrupulous telemarketers who "verify" the change in provider by using a normal telemarketing call which is designed to elicit a series of "Yes" answers by the consumer. These responses are then spliced into a series of questions that were never asked, that are designed to show the consumer gave permission for the change.

It is easy to see how junk faxers could easily use the same tactic.

If the Commission improvidently decides to make this change, the only way it should be allowed is to require the consumer's own voice affirmatively giving the same information that the new rules require be in writing. No series of "Yes" answers to a series of questions should be acceptable under any circumstances.

Conclusion

Because of the opportunity for mischief, I urge the Commission to deny Mr. Mayhill's Petition.

If the Commission decides to grant the petition, only affirmative, complete statements, made by the consumer and saved to an audio file, should be acceptable.

I thank the Commission for the opportunity to submit this opposition.

Wayne G. Strang

August 12, 2003